

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
METRO PAVING INC.,)
)
Appellant,)
)
vs.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)

PCHB No. 221

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

A formal hearing on these matters, the appeals of three civil penalties of \$250.00 each (a total of \$750.00) for alleged violations of respondent's Regulation I came on before the Pollution Control Hearings Board in Seattle, Washington at 9:30 a.m. on June 26, 1973.

Pursuant to RCW 70.94 and Regulation I, two of these civil penalties were assessed for violation of Section 9.03(a) of respondent's Regulation I. The third civil penalty was assessed for violation of Section 6.03 of respondent's Regulation I.

To facilitate the hearing, these appeals were consolidated and

1 heard as one rather than seriatim.

2 All members of the Board were present with W. A. Gissberg acting
3 as presiding officer in behalf of the Board. Appellant was present
4 and represented by its attorney, R. H. Sterne. Respondent appeared
5 through its counsel, Keith D. McGoffin.

6 Ernest H. Yamaguchi, Seattle court reporter, recorded the proceedings

7 Having heard the testimony, reviewed and studied the exhibits and
8 being fully advised, the Board makes the following:

9 FINDINGS OF FACT

10 I.

11 Appellant did not offer any objection to shading of the Ringelmann
12 scale as set out in Civil Penalties No. 478 and No. 496 nor object to
13 the charge regarding the mist arrestor as set out in Civil Penalty No. 02

14 II.

15 Appellant conceded that the only reason for its appeal was that
16 the amount of the assessment for each violation was not commensurate
17 with the seriousness of the offense.

18 III.

19 Appellant and respondent had many discussions regarding the need
20 to meet regulatory standards of the agency prior to issuance of the
21 civil penalties involved in this hearing. Respondent advised appellant
22 in writing on several occasions regarding its doubts as to the probable
23 efficiency of equipment appellant proposed to install in its asphalt
24 plant.

25 IV.

26 Appellant did not make immediate reports of equipment breakdowns

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 as required by Section 9.16 of the agency's Regulation I but were not
2 cited by respondent for such oversight or neglect.

3 From these findings the Board comes to these:

4 CONCLUSIONS

5 I.

6 Appellant was in violation of Section 9.03(a) of respondent's
7 Regulation I as set out in Notices of Civil Penalty Nos. 478 and 496,
8 and of Section 6.03 of respondent's Regulation I.

9 II.

10 Appellant was not willful in causing such violations, but
11 appears to have been naive in relying so heavily upon the technical
12 and engineering advice of equipment suppliers and neglecting to pay
13 heed and consider more seriously the warnings it was receiving
14 concurrently from respondent regarding the capability of equipment
15 offered by said equipment suppliers to perform in a manner so as to
16 meet fully the requirements of appellant's Regulation I.

17 III.

18 Appellant, at the time of the hearing had achieved compliance
19 with respondent's Regulation I and was operating one of the cleanest
20 asphalt plants in the Northwest.

21 IV.

22 This Board is knowledgeable as to the policy and aim of
23 respondent to seek compliance and not just enforce its Regulation to
24 accumulate fines. At the same time, the time and effort spent by
25 representatives of respondent are costly and such costs must be considered
26 part of any assessments made for violation. However, the total fine

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 seems high in view of the attainment finally of compliance.

2 From which the Board makes the following:

3 ORDER

4 The appeal is denied but the matter is remanded back to
5 respondent for imposition of a lesser penalty that in part reflects
6 some of its costs but in no case to exceed \$500.00

7 DONE at Lacey, Washington this 11 day of July, 1973.

8 POLLUTION CONTROL HEARINGS BOARD

9
10 WALT WOODWARD, Chairman

11 
12 W. A. GISSBERG, Member

13 
14 JAMES T. SHEEHY, Member

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26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER